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SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 31st MEETING (SECOND PART)*

Held at the Palais des Nations, Geneva,
on Tuesday, 25 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ
later: Mr. CHERNICHENKO
later: Mr. SACHAR

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* The summary record of the first (public) and third (closed) parts of the meeting appear as document E/CN.4/Sub.2/1992/SR.31 and Add.2 respectively.

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THE RIGHT OF EVERYONE TO LEAVE ANY COUNTRY, INCLUDING HIS OWN, AND TO RETURN TO HIS COUNTRY (agenda item 19) (continued)

1. Mr. EIDE said that he would like the wording of agenda item 19 to be amended so as to include the question of involuntary displacements, a very serious phenomenon which had assumed larger proportions as a result of the policy of ethnic cleansing being applied in a certain region. The Sub-Commission should spend more time on that very important issue at its next session.

2. The CHAIRMAN said that he personally endorsed what Mr. Eide had just said and would like the members of the Sub-Commission to agree on new wording for the agenda item, in order to reflect the diversity of the problems raised.

3. Mrs. PALLEY also endorsed Mr. Eide's comments, but feared that if the Sub-Commission changed the wording of item 19, it would have far too many matters to consider under that item the following year.

4. Mr. GUISSE, also associating himself with the views expressed by Mr. Eide, said that he wondered whether the Sub-Commission should not consider, under agenda item 19, the question of the protection of persons who, having sought asylum in a country, were, as in Germany, subjected to harassment and aggression by a part of the population who denied them the right to settle there.

5. Mr. TIAN Jin said that the circumstances in which the agenda item had been adopted were well known. It might be that the right proclaimed in it embarrassed certain Western countries today. He could not go along with Mr. Eide's proposal concerning the wording of item 19, since he considered that the meaning of expressions such as enforced displacement, enforced expulsion or large-scale exodus was not entirely clear.

6. Mr. BOUTKEVITCH thought that there were not sufficient reasons, notably legal reasons, to link the question of the right of everyone to leave any country with the question of forced displacements. The latter phenomenon not only constituted an infringement of the aforementioned right but was also a violation of numerous other fundamental rights. It might, moreover, assume a variety of forms. It would therefore be appropriate for the Sub-Commission to consider it separately at its next session.

7. Mr. EIDE said that the two questions were well and truly linked since to displace a person by force and to keep him far from his home was a violation of his right to return to his country and to his home.

8. Mr. Chernichenko took the Chair.

9. Mr. UL HAKIM said that the Sub-Commission experts were concerned not only with the violation of the right of anyone to leave any country and to return to it but also with a phenomenon like that of ethnic cleansing. The fact that distances were becoming less and people were becoming more mobile was also a feature of the contemporary world. It would therefore be appropriate to

reformulate the wording of item 19 in order to incorporate in it the question of displaced persons as well as that of migrant workers, who were assuming growing importance.

10. Mr. FORSTER (International Work Group for Indigenous Affairs) read out a joint statement drafted by the following non-governmental organizations: International Work Group for Indigenous Affairs, Human Rights Advocates, International League for the Rights and Liberation of Peoples, Women's International League for Peace and Freedom, Habitat International Coalition, Pax Christi International, Indigenous World Association, National Aboriginal and Islander Legal Service Secretariat, Movement against Racism and for Friendship among Peoples, International Indian Treaty Council, Sierra Club Legal Defense Fund, International Educational Development, Third World Movement against the Exploitation of Women, World Organization against Torture and International Fellowship of Reconciliation.

11. The Papua New Guinea Government's cancellation of the passports of all Bougainvillians seeking to assert their rights under international law was in contravention of article 13 (2) of the Universal Declaration of Human Rights. In complicity with the Government of the Solomon Islands, it had prevented Bishop John Zale from speaking on the human rights situation at Bougainville in the Sub-Commission. He himself, whose family had resided in Bougainville for four generations, had been banned from returning by the Papua New Guinea Government which had maintained a three-year old blockade of the island, preventing, inter alia, any international body, governmental or non-governmental, from entering it. The above-mentioned organizations requested the Sub-Commission to call upon the Papua New Guinea Government to respect the human rights and fundamental freedoms of the people of Bougainville, including freedom of movement. The Papua New Guinea Government was using Article 2 (7) of the Charter of the United Nations in order to engage in the methodical destruction of the society, the culture and the economy of Bougainville. Thus, governmental forces had recently destroyed two large villages in the Manetai region and had murdered their chiefs.

12. At its forty-first session, the Committee on the Elimination of Racial Discrimination had requested the Papua New Guinea Government to provide it with information on the situation in Bougainville. The people of Bougainville were gratified that the Sub-Commission was considering a draft resolution on the situation and hoped that the resolution would encourage the new Papua New Guinea Government to restore their rights and fundamental freedoms.

13. Mrs. MENICI (International League for the Rights and the Liberation of Peoples) deplored the fact that in Israel the law authorized the Minister of the Interior to turn down, without providing any explanation, applications for permanent residence made by non-citizen spouses of non-Jewish citizens whereas under the Law of Return spouses of Jewish citizens could acquire at one and the same time a residence permit and citizenship. The State of Israel was, however, a party to the United Nations Convention on the Nationality of Married Women which stated that: "each contracting State agrees that the alien wife of one of its nationals may, at her request, acquire the nationality of her husband through specially privileged naturalization

procedures". The International League for the Rights and Liberation of Peoples was in possession of reliable documentation concerning cases in which the Israeli Ministry of the Interior denied Palestinian citizens of Israel the right to live in their homeland, with their spouses and children.

14. Moreover, Palestinians in the occupied territories did not enjoy citizenship of any country. They had resident status, whereby they had the right to live in the territories, to work and to own property. However, those rights were neither inalienable nor transferable. Since 13 September 1987, Palestinian children born to mothers without resident status had no legal status or identity. Some could not even obtain birth certificates. That situation was due to the fact that Israel had granted resident status only to the Palestinians physically present in the territories at the time of the 1967 Census. The other Palestinians could apply for that status through a procedure called family reunification. From 1967 to 1987, only 19,000 of the 140,000 applications for family reunification had been granted. For that reason, many Palestinians were compelled to live in exile and were unable to reside in the territories which they regarded as their homeland. That was a violation of the right of return recognized in many General Assembly resolutions, notably resolution 194 of 11 December 1948.

15. The Committee on Palestinian Rights had stated that the exercise by Palestinians of the right to return to their country was a condition sine qua non for the exercise of the right to self-determination, national independence and sovereignty by the Palestinian people. If the Israeli Government really wanted peace, it must put an end to its expulsions of Palestinians, recognize their right to freedom of movement and renounce once and for all its policy of changing the demographic composition of the occupied territories. The peace negotiations could thus resume in more favourable conditions and achieve a lasting and just settlement to the Israeli, Palestinian conflict.

16. Mr. MacPHERSON (Friends World Committee for Consultation (Quakers)) said that he would like the Sub-Commission to set up a working group at its next session to improve the draft declaration on the right of everyone to leave any country, including his own, and to return to his country. His organization would also like the Sub-Commission to include the vexed question of displaced persons and refugees in agenda item 19.

17. Mr. LITTMAN (International Fellowship of Reconciliation) welcomed the improvement in the situation of the Jewish minority in Syria, including the recent release of the last two persons who had been detained without trial for having tried to leave the country without permission. In that regard, the International Fellowship of Reconciliation had, on 30 April 1992, proposed its good offices to the Permanent Representative of Syria to the United Nations Office at Geneva in order to provide humanitarian assistance to Syrian Jews wishing to leave the county: that offer still stood. According to the head of the Syrian Immigration and Passport Office, 700 exit visas had been granted from May to July 1992. It should be noted that although Jews who had obtained permission to emigrate could sell their property, they could only take an amount of $2,000 with them. Finally, Jews not wishing to leave Syria were now permitted to travel abroad like other Syrian citizens and their passport was no longer stamped "disciple of Moses".

18. There was another Jewish community whose members should be able to emigrate without hindrance if they so desired: that of the Yemen. Indeed, the Yemeni Minister for Foreign Affairs had recently stated that the Constitution authorized all citizens to travel without restrictions but forbade them from entering the territory of Israel. He recalled that he had recently evoked, on behalf of the International Fellowship of Reconciliation, the possibility of setting up a "United States of Abraham" in the Middle East which would include Israel, Jordan and the Palestinians. A few days later, Israel's Prime Minister Yitzhak Rabin had stated that he did not exclude the idea of an eventual confederation consisting of Israel, Jordan and the Palestinians. Mr. Rabin had also indicated that the head of the Palestinian delegation on returning home after the Madrid Conference had said in a reply to a question by a journalist about an eventual confederation of the Palestinians and Jordan "Why not with Israel?". The International Fellowship of Reconciliation awaited new ideas and new resolutions from the Sub-Commission.

19. Mr. DESPOUY expressed surprise that the report on the work of the Sub-Commission's forty-third session failed to reflect its decision to adopt the proposal which he had made to the effect that the question of refugees should appear as a separate sub-item under item 19. It was true that the wording of agenda item 19 had been adopted during the cold war, on the initiative of countries whose immigration policies were very restrictive at the present time precisely because of the opening of the borders of the former communist bloc countries. It would therefore be appropriate to take account of how the situation evolved and to include the question of refugees and involuntary displacement in item 19.

20. The CHAIRMAN proposed that experts concerned should meet informally in order to draw up new wording for item 19. He pointed out, however, that the question of the right of anyone to leave any country, including his own, and to return to his country would continue to be studied under that item.

21. Mr. MASRI (Observer for Syria), speaking in exercise of the right of reply, said that he wished to provide a number of clarifications about the situation of the Jewish community in Syria based on the statements by one of the leaders of that community, Mr. Ibrahim Hamra. Mr. Hamra had asserted that Syrian Jews lived in a multi-confessional State in which they were able to practice their religion and exercise their freedoms without any obstacle; the members of the Jewish community enjoyed the same rights as other citizens, were able to leave the country and to return to it in the normal way and their passports were identical in every respect to those of other citizens; Syrian Jews rejected the idea of emigration and of any foreign interference in their affairs, being perfectly capable of resolving their problems themselves.

22. He concluded from Mr. Hamra's statements that by declaring that they were proud of belonging to the country in which they lived, Syrian Jews offered a good example to all citizens in general and to Jews throughout the world in particular. Moreover, Syrian Jews refused any foreign party the right to interfere in their affairs since the rights which their citizenship conferred on them were guaranteed by the Constitution and the law and the highest authorities of the country ensured that they were respected.

23. The CHAIRMAN said that the Sub-Commission had concluded its consideration of agenda item 19.

DISCRIMINATION AGAINST INDIGENOUS PEOPLES (agenda item 15)

24. Mr. CISSE (Representative of the Secretary-General), introducing agenda item 15, said that the Working Group on Indigenous Populations had met from 20 to 31 July 1992, and had considered standard-setting concerning the rights of indigenous peoples, developments pertaining to the promotion and protection of human rights and fundamental freedoms of indigenous populations, the study on treaties, agreements and other constructive arrangements between States and those populations and the study on the cultural property of indigenous peoples. The report on the Working Group's session, including the draft declaration on the rights of indigenous peoples, appeared in document E/CN.4/Sub.2/1992/33.

25. Moreover, a technical meeting on the International Year for the World's Indigenous People had been held from 3 to 5 August 1992 and had provided guidance to the Coordinator for the International Year, the Under-Secretary-General for Human Rights, Mr. Antoine Blanca. The Coordinator, in conjunction with the International Labour Organisation and other United Nations agencies, had taken a number of measures to ensure the full participation of indigenous peoples in the planning and implementation of the programme of activities scheduled for the International Year. Thus, there had been an exchange of ideas and suggestions in the two technical meetings on the International Year, consultations with indigenous peoples had been organized in the Working Group on Indigenous Populations, the Sub-Commission, the Commission and other United Nations expert meetings, as well as regular contacts with the NGO Committee on the International Year in New York.

26. With the support of Governments, the Coordinator had set up a small team of indigenous administrators to assist him in his work. The Department of Public Information had prepared, in consultation with the Coordinator and with representatives of indigenous people, a poster, a brochure, a fact sheet, a press kit and other material for translation into the six official languages of the United Nations by the end of the current month. There were also plans to use radio and television to raise public awareness of the International Year. The official opening of the Year would be 10 December 1992, which was also International Human Rights Day.

27. The General Assembly had also approved the establishment of a Voluntary Fund for the International Year and called for contributions from Governments and other sources. Amounts would be disbursed to finance small projects for indigenous peoples and activities to draw public attention to their problems. Other United Nations organizations, such as UNDP and UNICEF, were planning their own programmes of activities. Lastly, it was to be hoped that NGOs would join indigenous people and other non-governmental organizations in contributing to the success of the International Year for the World's Indigenous People.

28. Mr. Chernichenko took the Chair.

29. Mr. ALFONSO MARTINEZ asked members to excuse him for being unable to present a final version of his report (to be circulated under the symbol E/CN.4/Sub.2/1992/32) on treaties, agreements and other constructive arrangements between States and indigenous populations. Meanwhile, a working paper containing the bulk of the information in the report was at their disposal.

30. Chapter I would indicate the research conducted since the submission of the first report, at the Sub-Commission's forty-third session. Unfortunately, he had received answers to only 15 of all the questionnaires he had sent out to Governments and to intergovernmental and indigenous organizations. However, he wished to point out that Canada had answered the questionnaire in very great detail, with a wealth of documents, something that had enabled him to gain a comprehensive overview of the juridical and practical situation of the indigenous populations in Canada.

31. Chapter II, prepared with the fruitful cooperation of Mrs. Schulte-Tenckhoff, would present some anthropological and historical considerations so that non-indigenous persons could understand the mentality of indigenous peoples, as well as their social, juridical and political institutions. Indeed, it was not always easy to grasp the specificity and the non-State nature of such societies.

32. Chapter III would discuss the first encounters between indigenous peoples and Europeans. The chapter explained how the prejudice towards the indigenous peoples, accused more particularly of being "inferior" and backward, had been used by the colonizers as a pretext for justifying the annexation of land occupied by those peoples. It should none the less be pointed out that, in the early days of colonization, the European countries had regarded the indigenous peoples as nations and as subjects of international law able to conclude treaties involving rights and obligations for both parties. Then, little by little, the nation States which had been created had taken over the indigenous populations.

33. Chapter IV would discuss the diverse juridical situations falling within the scope of the study, namely treaties, agreements and other constructive arrangements between States and indigenous populations. He had thought it advisable to look into the situation of indigenous populations which had not concluded either a treaty or agreement or constructive arrangement with States and to examine to what extent agreements of that kind might be concluded in the future. He would also be examining a number of instruments ratified by States, affecting indigenous peoples as third parties, the most recent being ILO Convention No. 169 of 1989 concerning Indigenous and Tribal Peoples in Independent Countries.

34. He wished to draw the attention of members to the conclusions and recommendations set out in chapter V, and pointed out that, to complete his task properly, he would still need special assistance from the Centre for Human Rights or an external consultant. In view of the amount of work still left to be done, he would not be able to submit the study in final form until 1995.

35. Mr. Sachar took the Chair.

36. Mr. HATANO pointed out that, two years earlier, he had asked the Sub-Commission to define the term "indigenous peoples", and the answer had been that it was premature to do so. He therefore wished to repeat his proposal now, when the declaration on the rights of indigenous peoples was being drafted. Even if it was not a binding legal instrument, it none the less set out the rights of indigenous peoples and the duties of States towards those peoples. However, nowhere did the declaration define the key expression "indigenous people". Apparently, indigenous organizations did not want the term to be defined for fear some indigenous persons would not be covered by the scope of the definition. However, such organizations had repeatedly affirmed that the world's population included approximately 300 million indigenous persons. How had they arrived at that figure without some yardstick or definition to distinguish between indigenous and non-indigenous persons? He would therefore be grateful if those organizations explained what definition or criterion they used to arrive at a figure of 300 million indigenous persons throughout the world, so that the definition could be included in the declaration.

37. Mrs. DAES, introducing the report on the work of the tenth session of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1992/33), in her capacity as the Group's Chairperson/Rapporteur, said that the report was a collective work and she thanked all those who had taken part in preparing it. Chapter I summed up the general debate. Chapter II was entitled "Evolution of standards concerning the rights of indigenous peoples". In that connection, she would point out that the Working Group had completed the first reading of the revised text of paragraphs 20 to 37 of the draft declaration on the rights of indigenous peoples (E/CN.4/Sub.2/1992/28) and, on second reading, paragraphs 1 to 14 of the draft. Chapter II also contained a summary of the dialogue between representatives of Governments, indigenous peoples and the members of the Working Group. In addition, it briefly set out the comprehensive discussions on a number of still controversial terms contained in the draft declaration, such as "self-determination", "right to lands and natural resources", "peoples", "lands and territories", "cultural genocide", and so forth.

38. Chapter III discussed developments pertaining to the promotion and protection of the human rights and fundamental freedoms of indigenous populations. In that respect, the representatives of indigenous populations had painted a very dark picture of their situation, some of them describing the evils of misery, poverty, disease, unemployment, racism, inadequate education and the destruction of their environment.

39. Representatives of a number of Governments had informed the Working Group and the participants of measures taken in their countries to improve the social, economic, political and cultural situation of the indigenous peoples. Several participants had recognized that the competent United Nations bodies, and in particular the Working Group on Indigenous Populations, had made a great contribution to the recognition, promotion and protection of the rights and fundamental freedoms of indigenous peoples. For their part, the indigenous peoples placed great hopes in the early adoption, at least by the

Sub-Commission, of the draft declaration. The participants had also pointed to the importance of ILO's activities and emphasized the significance of ILO Convention No. 169 of 1989.

40. Chapter IV dealt with the study on treaties, agreements and other constructive arrangements between States and indigenous peoples, undertaken by Mr. Alfonso Martínez, who had made an oral presentation of his progress report to the Working Group. The representatives of indigenous peoples had fully supported the study, which they regarded as very important.

41. Chapter V covered various issues connected with the Working Group's mandate and the International Year for the World's Indigenous People, the main theme of which was "Indigenous peoples - a new partnership". The chapter also mentioned a number of meetings and seminars that had been organized in various countries and whose conclusions and recommendations were of significance for indigenous peoples. One section also discussed the ownership and control of the cultural and intellectual property of indigenous peoples and reference was made to the activities of the Voluntary Fund for Indigenous Populations. Thanks to the Fund, 41 indigenous persons had been able to take part in the work of the Group, on whose behalf she wished to thank all Governments, non-governmental organizations and individuals who had so generously made contributions. She invited members of the Sub-Commission to consider the Working Group's conclusions and recommendations, which had been adopted unanimously and were contained in chapter VI. The Group's tenth session had been very fruitful. Meetings had been attended by almost 650 people, representing Governments, specialized agencies, intergovernmental and non-governmental organizations, members of the academic world and indigenous persons from every part of the globe. It was her hope that a new and better era was emerging for the world's indigenous peoples.

42. Mrs. ATTAH, speaking in her capacity as a member of the Working Group on Indigenous Populations, said that she fully associated herself with the comments by Mrs. Daes and would like to add that indigenous populations were still extremely worried about land questions, for they were very attached to their land. However, their lands were still being taken away from them for the benefit of transnational corporations or under various development programmes. Moreover, indigenous persons were still being forcibly recruited into the armed forces or into armed groups. The Governments concerned should remedy those two situations and give thought to the kind of autonomy they could grant to such populations, something that was one of their main aspirations.

43. In her opinion, some of the organizations that took part in the Working Group on Indigenous Populations had no place in the Group, for they represented not indigenous populations but minorities. She hoped that the Secretariat would help to settle that problem.

44. Another disturbing point was that so little had been collected so far by way of funds to organize the International Year, and she appealed to all Governments and all persons of good will to make financial contributions to the success of the Year. Lastly, she hoped that the Coordinator, Mr. Blanca,

would ensure that indigenous persons were closely connected with preparing and carrying out the International Year so that it would truly mark the beginning of a new partnership between indigenous and non-indigenous peoples.

45. Mr. Alfonso Martínez resumed the Chair.

46. Mr. GUISSE said that, like Mr. Hatano, he thought that the concept of indigenous people should be clearly defined so as to determine the role that indigenous peoples were to play both on the international scene and in terms of the nation of which they formed an integral part. Some people sought to define a minority as a human group with its own land and culture. Perhaps that could be the starting point for defining an indigenous people. He wondered to what extent the rights granted to indigenous peoples - some had even gone so far as to speak of the right to self-determination - might not jeopardize the principle of the integrity of the State. Furthermore, it was not possible to think of separate development for an indigenous people. Indigenous peoples should take part in the endeavour to develop the national community as a whole. In that regard, it was disquieting to find that some groups speaking on behalf of indigenous peoples had been the cause of numerous disturbances in many countries. He would therefore like to see a discussion on the concerns and issues he had mentioned.

47. Mr. SABOIA stressed how important it was to understand the diversity of situations of the various indigenous populations and the way they interacted with other groups in the societies in which they lived. The American continent was an example of such diversity, and could be explained by cultural, social and economic factors. Latin America had many indigenous peoples who were the descendants of previously powerful peoples such as the Mayas, the Aztecs and the Incas, who had achieved a high degree of civilization. Those peoples had preserved their languages and their traditions played an important cultural and economic role and, in some countries, they even formed the majority of the population.

48. In North America, Indian societies had resisted, often by force, the invasion and conquest of their territory, but they had been decimated and the survivors had found it difficult to keep up their traditional way of life. In some regions, however, they had remained an important demographic and cultural factor, affirming their identity and asserting their rights. For example, they were demanding more autonomous forms of relationship with the State in which they lived, on the basis, in some instances, of treaties and agreements concluded long ago.

49. The Indians of the Amazon basin, who led a nomadic or semi-nomadic life, lived from hunting, fishing and gathering. They, too, had also greatly suffered from colonization. They had either mingled with the white or black population or retreated to more remote areas. Some groups, like the Yanomani, were extremely vulnerable and stood in need of assistance and protection.

50. In view of such diversity, the draft declaration should help to promote and protect the human rights of indigenous peoples and, at the same time, provide for an adequate framework for constructive and cooperative relations between the indigenous populations and other sectors of the society in which they lived. A balance must be struck between the rights of those populations

and the aspirations of the people living in the surrounding areas, so as to avoid excessive distinctions in legal treatment that could bring the various groups into conflict with one another. It should, in addition, be kept in mind that, in many areas, indigenous peoples coexisted with people facing very harsh living conditions. In regard to the right to self-determination, therefore, a balance should be established between recognition of the right of peoples to self-determination and the need to preserve the unity and territorial integrity of States. Yet the necessary balance seemed to be missing from the draft declaration (E/CN.4/Sub.2/1992/28).

51. Paragraph 1 stated that indigenous peoples had the right to self-determination "in accordance with international law", which meant laying the legal basis for a right of secession. It would be more realistic and more in keeping with the aspirations of most indigenous groups to assert that they were entitled to some degree of autonomy. Again, paragraph 16 contained an unqualified endorsement of the right to ownership by indigenous peoples of the lands and territories they had traditionally occupied or otherwise used. If no limitation was placed on the exercise of that right, more particularly in the constitutional or legal framework, many States might well run into insurmountable difficulties. Brazil's Constitution recognized, for instance, the possession and usufruct, but not the ownership, of indigenous lands in view of the nomadic lives of many tribes. Granting full legal ownership would mean granting the right to alienate the lands in question. Furthermore, the laws and customs of indigenous peoples should not be endorsed unreservedly. While those peoples did indeed have the right to preserve their customs, social organization and institutions, limitations should be introduced in order to preserve basic principles such as the rule of law, non-discrimination, equity and preservation of the public interest. In addition, the civil and political rights of all individuals, including indigenous persons, should be protected. In fact, little regard was paid in the draft declaration to the fact that human rights were universal and must be respected by all, including indigenous populations.

52. Lastly, members of the Sub-Commission should not forget that their task was essentially to promote and protect human rights as set forth in the Universal Declaration, and they must strive to protect minorities and other vulnerable groups from discrimination and ensure their legitimate right to preserve their identity. The Sub-Commission should, however, avoid the temptation of going further, by trying to influence the course of history and the interaction between the different social groups.

53. Mrs. WARZAZI paid tribute to the Working Group on Indigenous Populations and its Chairperson, Mrs. Daes, for the work done in cooperation with Governments and non-governmental organizations to restore the rights and dignity of those populations, more particularly by preparing a draft declaration on the rights of indigenous peoples. She endorsed the Working Group's conclusions and recommendations at its tenth session and welcomed the fact that some questions affecting indigenous peoples, including ownership and control of cultural property, formed the subject of specific studies. It was encouraging to find that international meetings and conferences, such as the Rio Conference, for instance, took account of the problems of indigenous

peoples. It was her hope that the draft declaration on the rights of indigenous peoples would be completed and adopted by consensus in 1993, which would also be International Year for the World's Indigenous People.

54. She was concerned about comments made a few days previously by a representative of a non-governmental organization defending the interests of indigenous populations. The person in question had said that the United Nations Secretariat was discriminatory in its treatment of organizations representing indigenous populations and did not sufficiently associate them with the preparation of the International Year. She hoped that the Secretariat would make good that situation, if that was the case, or at least would clear up a misunderstanding. She also welcomed the study by Mr. Alfonso Martínez on the importance of treaties, agreements and other constructive arrangements, and found it deplorable that Governments and organizations representing indigenous populations had not so far lent him all the necessary support. She did not doubt, however, that he would ultimately convince them of the value of such a study.

55. Mrs. FORERO said that, in his report, Mr. Alfonso Martínez had chiefly studied the English-speaking Americas because he did not have sufficient documents and information on treaties, agreements and other constructive arrangements between indigenous populations and States in other regions of the world. Governments and organizations concerned should assist Mr. Martínez so as to fill in the gap.

56. In Latin America, even though there was substantial interbreeding, the indigenous populations had preserved their linguistic and cultural specificity since pre-Colombian times and were still large in number. Some countries had chosen not to grant special treatment to their indigenous populations. Others, like Colombia, had taken special steps to protect their cultural identity. Relations between those populations and the State were governed by legislation which recognized that those peoples had the right to a social, political and economic organization different from that of the rest of the population. She hoped that Mr. Alfonso Martínez would be able, in the context of his study, to consider treaty relations of that kind between States and indigenous populations, particularly in Latin America, Africa and Asia.

57. Mrs. BATZIBAL (International Association against Torture) expressed the hope that the discussions in the Sub-Commission and the Working Group on Indigenous Populations and the activities during the International Year for the World's Indigenous People would induce the international community and Governments to show greater respect for the rights of those peoples. In Guatemala, basic human rights were written into the Constitution yet they were violated day after day. All social sectors were affected, but indigenous persons, who accounted for 70 per cent of the population, were the main victims. They were, in fact, the victims of widespread discriminatory practices. They were compelled to take part in civil defence patrols. The army threatened and killed people accused of subversion or of being guerrillas, when those people were doing no more than defending the rights of the indigenous population and struggling to improve their status. Indigenous women were subjected to threefold discrimination, since they were both poor, women and indigenous. Young recruits were victims of the army's deculturation campaign. The traditional political parties made promises to the indigenous

communities and promptly forgot them when the elections were over. The army engaged in systematic oppression of the civilian population. The assistant human rights procurator, Mr. Cesar Alvarez, had said that the rights of the members of the Comunidades de Población en Resistencia were being violated and had urged the President of Guatemala to see for himself the situation of the peasants displaced by the war.

58. To secure respect for their political, economic, social and cultural rights, the Mayan people of Guatemala were calling on the army to withdraw promptly from the communities, churches, schools and all other places belonging to the indigenous population; to halt all forms of forcible recruitment; for conscription on the basis of social or economic criteria to be discontinued; for young people to be able, if they so wished, to do social service instead of military service; for the elimination of the civil patrols, the paramilitary groups, the military commissars, the model villages and all other forms of compulsory organization which violated the rights of the Mayan people; for respect for their cultural specificity and freedom of organization; for the abrogation of articles of Constitution which were harmful to their integrity and justified discrimination and oppression; for the Mayan people to play a direct part in the Government and the Army's negotiations with the URNG (Unidad Revolucionaria Nacional Guatemalteca); and for the negotiations to bear in mind the demands of all sectors of society in Guatemala. Lastly, it was her hope that the Sub-Commission's experts and the international community would continue to help the Guatemalan people and, in particular, the Mayan people, to defend their rights.

59. Mr. ATTAYOUB (International Association of Educators for World Peace), speaking in his capacity as a member of the Association and also as Chairman of the "Tuareg-Temoust Survival" organization, said that the Tuaregs numbered approximately 3 million people, namely 1.5 million in the Niger, 1 million in Mali, and the remaining 500,000 in Algeria, Libya and Burkina Faso. Before the colonial period, the Tuaregs had lived in harmony with other ethnic groups. At the beginning of the century, they had strongly resisted colonial penetration and then arrived at an understanding with the colonial administration, which had let them live in accordance with their own social and political system, in exchange for which they had accepted the French presence. Accession to independence had led to disturbances. In Mali, a Tuareg uprising had been put down in a bloodbath. In the 1960s, a policy of discrimination against the Tuaregs had started in the Niger and in Mali: marginalization at all levels of society, prevention of school enrolment and no development policy.

60. The 1973-1974 drought had been a severe blow to the Tuaregs: thousands of people and almost all of the cattle had died. Many Tuaregs had taken refuge in Algeria and Libya. In 1980, Colonel Qaddafi had condemned the oppression of the Tuaregs in the Niger and in Mali and invited them to live in Libya. In 1987, the new President of Niger had called on the Tuaregs to return home. An agreement had been reached between the Tuaregs and the Government of the Niger to organize the return of opponents and thousands of refugees. However, arbitrary arrests and summary executions had swiftly followed. In May 1990, senior officials in the Niger had, in the presence of the Head of State, purely and simply called for the extermination of the Tuaregs. In June 1990, several hundred civilians had been massacred in

various areas. No commission of inquiry had been set up to shed light on the facts, for which the Minister of the Interior was said to be responsible. The National Conference, covering all sectors of the society of the Niger, took no steps to help the Tuaregs. Faced with the Government's refusal to find a peaceful and lasting solution to their problems, some Tuaregs organized a rebellion in the northern part of the Niger. A number of Tuaregs took refuge in Mali to escape the massacres in the Niger. The Malian authorities either sent them back or put them in prison. Young Malian Tuaregs attacked the prison where their brothers were being held and that was the start of the Tuareg rebellion in Mali. After several months of confrontation, in January 1991 the Government of Mali and the Tuaregs signed the Tamanrasset agreements, under the auspices of Algeria. The Government had not respected the agreements and further massacres had taken place, particularly at Timbuctoo and Lere. On 11 April 1992 the Tuaregs and the Malian Government had signed a national pact under the aegis of Algeria. Since it had been signed, 100 Tuaregs had been killed by the Malian army.

61. With their very existence under threat, the Tuaregs were demanding the right to administer their own region, in a context of broad political, economic, social and cultural autonomy. He appealed to the United Nations and human rights organizations to intercede and put an end to the massacres and to call for impartial international commissions of inquiry to be set up and shed light on the massacres of thousands of Tuareg civilians over the past two years in Mali and the Niger.

62. Mr. FORSTER (International Work Group for Indigenous Affairs) said that, despite Commission on Human Rights resolution 1992/58, the situation of indigenous peoples in Myanmar had not improved. The authorities were guilty of flagrant human rights violations: arbitrary arrests, tortures, extrajudicial executions, forced labour, rape, looting and destruction of villages. There were now nearly 400,000 Burmese refugees in neighbouring countries, including 250,000 in Bangladesh and 80,000 in Thailand. In addition, the number of internally displaced persons was estimated at 1 million. Contrary to its assertions, the Government of Myanmar had stepped up military operations in the Karen State, where the army was forcing tens of thousands of people to leave their villages and live in camps, in which they were suffering from starvation and disease. The Government had warned that anyone, man, woman or child, who did not leave the village in time, would be shot down on sight. The same "relocation" policy was being conducted in the Kayah State and the Shan State, where, in March 1992, 21 villages had been burnt to the ground by the army, which had slaughtered domestic animals, destroyed crops and not allowed the villagers time to retrieve any belongings. On 5 April 1992, government troops had entered a Kachin village called Pran Hu-Dung and fired mortar rounds at the Catholic church where the villagers were attending mass. A nun and 8 children had been killed and dozens had been wounded. The army had then set fire to the village.

63. His organization called on the Commission on Human Rights to act urgently and send the Special Rapporteur to Myanmar, not only to Rangoon, but also to the border areas, so as to prevent the genocide of the indigenous peoples and the Muslim minorities. It also called on the main arms suppliers to the Myanmar regime, especially China, South Korea, Singapore, Pakistan and Poland, to halt the supply of arms. At the same time, it called on member countries

of the Association of South-East Asian Nations (ASEAN) to denounce the "constructive agreement" concluded with the Myanmar regime and join with the democratic countries in demanding that power be returned to the people. Lastly, he would urge the Sub-Commission and the Commission to ensure that their resolutions condemning human rights violations in the region were followed up.

64. Ms. SMITH (Four Directions Council) said that the people to which she belonged, the Dineh (Navajo), was threatened by cultural genocide because of Public Law 93-531, enacted by the Congress of the United States of America on 22 December 1974. A total of 15,000 faced eviction from their traditional homeland. Yet the Navajo, like their Hopi brothers and sisters, had deep spiritual ties with the land, their mother, the Earth. Unlike the settler immigrants, the indigenous peoples could not live outside the lands on which they had been put by the Creator. The attempts to uproot the Navajo were nothing new. In 1863, 8,500 Navajo had been forcibly removed from their ancestral homelands. The Government of the United States had signed a treaty and failed to respect it. In 1936, 150 Navajo families had been forced to move. In 1972, a further 50 families had been evicted, without any assistance or compensation. It should also be remembered that the United States Government had never apologised to the Lakota for the massacre of men, women and children perpetrated at Wounded Knee in December 1890. She called on the Sub-Commission to keep in mind the sufferings, injustice, discrimination and cultural genocide of the indigenous peoples of the United States of America.

65. Mrs. BATZIBAL (International Federation for Human Rights) said that, for 500 years, the Mayan people, who formed the majority of the population of Guatemala, had been humiliated, insulted, exploited and deprived of their lands. In 1985, for the first time in the history of Guatemala, the Constituent Assembly had discussed issues affecting the Mayan people. The Constitution now recognised the right of individuals and communities to preserve their cultural identity, including the right to a bilingual education. It also guaranteed the Mayan communities ownership of communal land and provided for financial and technical assistance so that the communities could improve their standard of living. Unfortunately, those provisions were not implemented and the Mayan people were still suffering from political, economic, social and cultural marginalization. The indigenous communities were badly affected by killings, kidnappings, disappearances, massacres, destroyed villages and crops, shelling, poisoning of rivers and forcible recruitment into the army.

66. Five centuries after the conquest, the Mayas proudly reaffirmed their decision to recover the material and spiritual wealth bequeathed to them by their ancestors. To restore harmony between man and the cosmos, the Mayan people urged the Sub-Commission to intercede and call on the Guatemalan Government to stop the forcible enlistment of young recruits into the army on a racial basis; to allow room at the negotiating table between the Government and army and the National Guatemalan Revolutionary Unit (UNRG) for representatives of the Mayan people, so as to find a solution to the problems that were the root cause of the internal armed conflict; to fully respect the Maya people's right to life and to organize in its own way so as to preserve its culture; to put an end to its campaign of intimidation against the leaders and members of Mayan organizations and to stop calling them "subversives,

terrorists or guerillas"; to do away with the civil defence patrols promptly and to withdraw the army from the Mayan communities; to restore to the Mayan people the land belonging to it; and to eliminate the death squads, military commissars, development zones and other means used by the army to oppress the Mayan people and the population at large.

67. She hoped that the International Year for the World's Indigenous People would be the dawn of a new era for the Mayan people and for the indigenous peoples of the Land of the Sun, now called America, and she urged the Sub-Commission to complete the drafting of the declaration on the rights of indigenous peoples.

68. Mr. CIURLIZZA (Survival International) said that his organization had decided not to take the floor at the present time and that the text he was to have read had been circulated among the members of the Sub-Commission.

69. Mr. ARTUCIO (International Commission of Jurists) said that in April 1992, with the Guatemalan Human Rights Commission, his organization had arranged a training seminar for members of indigenous groups and communities to help familiarize them with and defend their rights at the national level and, incidentally, at the international level. A number of experts, including Mr. Despouy, had taken part in the seminar, along with the members of some 20 indigenous communities from five different ethnic groups. The record of the seminar was available to members of the Sub-Commission.

70. As to the question of human rights in Guatemala, the members of the Mayan community, who accounted for 60 per cent of the total population, were victims of serious discrimination because of their ethnic origin, the colour of their skin, their physical features and their culture and religious beliefs. The Mayas, however, were proud of their traditions and their culture and intended to defend them. In that connection, it was worth noting the extremely courageous attitude of indigenous women, who played a crucial role in championing human rights and particularly in combating forcible enrolment of their sons, husbands and fathers in the civil defence patrols. Mr. Tomuschat, the Commission on Human Rights expert, had called for the patrols to be disbanded, since they were guilty of many human rights violations. However, the patrols still existed, under another name, and they still committed the same violations.

71. Every day Guatemala's indigenous population suffered from oppression by the armed forces and paramilitary groups, as well as excesses by the armed opposition. Killings, kidnappings, tortures and forced displacement were commonplace in Guatemala. The armed conflict over the past 30 years had already produced 100,000 victims. His organization called on the Guatemalan Government and the Unidad Revolucionaria Nacional Guatemalteca (UNRNG) to bear in mind the aspirations of the indigenous population in the context of the negotiations to restore peace throughout the country. Peace alone would bring the necessary changes so that all Guatemalans could fully enjoy their rights.

72. Mr. MATARASSO (International League for the Rights and Liberation of Peoples) said that his organization welcomed the report by the Working Group on Indigenous Populations. The Group was of vital importance for the indigenous peoples, since in its present form it was for them the only

democratic forum in the United Nations system. The declaration on the rights of indigenous peoples was of the utmost importance and the League hoped that it would soon be adopted.

73. The League congratulated the Special Rapporteur on his progress report on the study on treaties, agreements and other constructive arrangements between States and indigenous peoples and was looking forward to the final study which, it hoped, would include material on Asia and Africa. Chiefly as a result of the activities of the Sub-Commission and the Working Group, it had come to be widely accepted that indigenous peoples were subjects of international law and had certain inalienable rights, the most important being the right to maintain their identity, which in most instances meant the right to use their own lands.

74. Yet a large number of Member States of the United Nations were not, unfortunately, of that view. For example, Malaysia, the world's largest exporter of rare timber, had authorized logging in a large part of the forests of Sarawak (Borneo), where the nomadic Penans lived. They had tried in vain to persuade the Government to stop the destruction of their environment, and were therefore opposed to bulldozers pushing into their forests. The police was reacting with force, and it was not known how many people had been killed during the clashes. Clearly, the Government's forestry policy served the economic interests of some high-ranking officials. The Government could not plead ignorance, for a report it had commissioned five years ago had revealed the adverse effects on the ecology of clearing the forests. The report had pointed out that the Penans had a long tradition of using the forests reasonably, in ecological terms.

75. Violation of the rights of the people was always accompanied by violation of the rights of the individual. For instance, Anderson Mutang Urud, a Kelabit, another indigenous people of Sarawak, was opposed to the destruction of the forests and had been instrumental in founding the Sarawak Indigenous People's Alliance (SIPA). He had been detained on 5 February 1992 and charged with running an unregistered society, SIPA. He had been kept in solitary confinement, forced to take cold showers in the middle of the night and to sleep without a shirt, sheets or blankets, and denied medical treatment. In the end, he had been released on bail, on 3 March, after international protests. He was to be tried in September 1992. Meanwhile, Mutang Urud was campaigning internationally against Malaysian logging activities. He had, among other things, made a statement at the Earth Summit at Rio de Janeiro. The Malaysian authorities had tried to discredit him in the media. Mutang Urud was now afraid to return to Malaysia because he would not get a fair trial and would be imprisoned yet again.

76. Mrs. WINTOUR (International Confederation of Free Trade Unions (ICFTU)) said that the ICFTU, which represented over 100 million workers worldwide, was concerned about the systematic discrimination against indigenous peoples and the inhuman conditions of work that were so often forced on them. For that reason, it was essential to adopt the declaration on the rights of indigenous peoples, which would affirm, among other things, their trade union rights, and to set up an effective mechanism to monitor application of the declaration. The situation of indigenous peoples was particularly serious in Latin America,

including Brazil, Colombia, Ecuador and Peru. However, for lack of time, she would confine herself to three other countries: Bangladesh, India and Guatemala.

77. In Bangladesh, the human rights of the tribal inhabitants of the Chittagong Hill Tracts were being systematically violated. The ICFTU had repeatedly raised the question in international forums, including ILO, for Bangladesh had ratified the ILO Convention concerning Indigenous and Tribal Populations. The ICFTU had provided evidence that the Bangladeshi armed forces had been involved in many acts of violence, including killings, torture, rape, and the forced relocation of the tribal population into cluster villages. Reliable reports confirmed, for example, that on 10 April 1992 members of the local Bengali militia and paramilitary groups had killed 230 people and wounded 150 more in the tribal village of Lougang. The ICFTU called on the Sub-Commission to urge the Government of Bangladesh to put an immediate end to the violation of the rights of the tribal peoples in the Chittagong Hill Tracts; to abide by internationally-recognized human rights standards; and to enter into negotiations with the representative organizations of the tribal peoples in the area, in order to arrive at a lasting peace.

78. In India, the failure to consult tribal peoples when drawing up development programmes had had tragic consequences for individuals and entire communities. On 13 July 1992, for instance, the police had opened fire on the population in Kalibel, a village in the district of Taloba, State of Maharashtra, protesting against the destruction of forest areas to make way for the resettlement of people displaced by the Narmada Dam project. Nawa Padvi, a 35-year-old woman, had been killed and another indigenous person had been seriously wounded. An inquiry commissioned by the World Bank, which was sponsoring the project, had pointed out serious mistakes, including the failure to consult the persons directly affected by the project. It was therefore essential for the project to be reviewed, with the full participation of those directly concerned.

79. In Guatemala, indigenous people accounted for more than 70 per cent of the total population but were the victims of exploitation and cruel oppression. Moreover, decisions were taken without consulting them. SUCHILMA, the El Peten woodworkers trade union, had publicly disagreed with the way in which the Government had drawn up development plans for the El Peten forestry region, criticizing it for not consulting areas organizations representative of the region. It had added that the people were tired of being treated like guinea-pigs. Another equally important issue was the Mayan people's historical right to the land. In cases of land rights, the courts had often been biased. In a recent case, in July 1992, 500 families in the Department of Quetzaltenango had, with the permission of the authorities, organized a march to protest against what they considered to be a discriminatory legal ruling and they had been violently dispersed by anti-riot squads. Twenty persons had been injured and one was still missing.

80. The ICFTU called on the Sub-Commission to urge the Government of Guatemala to end discriminatory practices against the indigenous peoples and, among other things, to put a halt to obligatory participation in the civil defence patrols, to guarantee freedom of movement and freedom of association,

to develop appropriate mechanisms for the demarcation of the communal lands of the Mayan people and to ensure full participation by all sectors of society, including representative indigenous organizations, in the negotiation and decision-making processes.

81. The ICFTU considered that the major development initiatives should be preceded by impact studies and the organization's representative of the indigenous peoples concerned should be consulted. Furthermore, recognition and demarcation of the territories of the indigenous peoples should proceed hand in hand with legalization of the ownership of lands used by non-indigenous peoples living inside and alongside forest areas. Land reforms and changes in land tenure patterns were also required to secure the livelihoods of those who lived outside the forests and indigenous territories, so as to reduce social conflict and pressure from landless families to occupy those territories. Lastly, it was important to recognize that all indigenous peoples had the right to be informed and consulted and to participate in decision-making in the legislative and policy fields, in keeping with the principles of equity and social justice.

82. Ms. MURCHIE (Indigenous World Association) said that the indigenous peoples, formerly scattered and powerless, could now find strength and a common voice in demanding justice. The indigenous peoples were grateful to the United Nations, and particularly the Working Group on Indigenous Populations, for contributing to such a renaissance, but were dismayed that so much time was being taken to adopt the declaration on the rights of indigenous peoples, for 11 years of patient deliberation had already gone by. It would have been gratifying if the adoption of the declaration coincided with 1993, the International Year for the World's Indigenous People, which, it was to be hoped, would have a positive impact on nation States and induce them to take measures to redress past wrongs suffered by the indigenous populations, who should be treated in the same way as their fellow citizens.

83. Regrettably, in proclaiming 1993 as the "International Year for the World's Indigenous People", the General Assembly had chosen to use the word "people" in the singular. If it had used the plural, it would have recognized the diversity of indigenous communities, which accounted for 300 million persons throughout the world. A more serious criticism was that the General Assembly had chosen the theme for the international year as "a new partnership", falsely implying that there was an existing partnership which could simply be upgraded in one short year. For 99 per cent of indigenous peoples, participation in decision-making did not exist, and for the other 1 per cent, participation was a token gesture. It was not a quibble about words but a matter of preventing certain States from using such a phrase to justify their current policies.

84. If the International Year was to be a success, more energy and funding were needed from the Centre for Human Rights in the preparations. The General Assembly could include in the agenda of the World Conference on Human Rights, to be held in Vienna in 1993, an item entitled "Indigenous peoples and their human rights".

85. Her organization endorsed the process of meaningful consultation of indigenous peoples in drafting the declaration in the Working Group on

Indigenous Populations, supported the Special Rapporteur in his study on the importance of treaties and expressed gratitude to States which had made a financial contribution to the Voluntary Fund, thanks to which indigenous peoples had been able to become more closely associated with the work of the Working Group.

86. Lastly, she wished to thank the Working Group's Chairperson, Mrs. Daes, for having come to the assistance of Maoris and non-Maoris. She was also grateful to Mr. Alfonso Martínez for agreeing to visit New Zealand in 1994 to hear the indigenous point of view about the Treaty of Waitangi.

87. Mrs. WARZAZI informed the representative of the Indigenous World Association that, at its second session, the Preparatory Committee for the World Conference on Human Rights had decided to include on the Conference's agenda an item entitled "Commemoration of International Year for Indigenous Populations".

88. Mr. FRAATZ (Anglican Consultative Council) said that official circles would be celebrating 12 October 1992 as the five hundredth anniversary of the discovery of the Americas, but for the great majority of the surviving indigenous peoples of the Americas, that date was viewed as the five hundredth anniversary of resistance. Moreover, 10 December 1992 would be not only Human Rights Day but also the start of the International Year for the World's Indigenous People.

89. The Sub-Commission should respond favourably to the appeals from non-governmental organizations representing the indigenous peoples, who were still victims of gross violations of their rights. His organization wished in that connection to draw the attention of the Sub-Commission and of non-governmental organizations to a most significant document prepared by the Pro-Justice and Peace Committee of Guatemala and published with the assistance of the World Council of Churches. It was entitled "The Mayan People and Human Rights: 1992" and had been circulated to most members of the Sub-Commission. It should be remembered that the Mayas form the majority in Guatemala but, like the black majority in South Africa, were victims of repression by a wealthy and well-armed minority. He urged members of the Sub-Commission to study the document and to support, to the fullest extent possible, the human rights demands put forward in it, so as to ensure the security and well-being of the Mayan people.

90. Mr. PARRI (Indian Council of South America) said that the indigenous nations were now, more than ever, demanding the right to self-determination, a right that was already set out in many international instruments, including the Charter of the United Nations, and should be explicitly reaffirmed in the universal declaration of the rights of indigenous peoples.

91. Contrary to the assertions of the representatives of some Governments, recognition of that right did not jeopardize either the sovereignty or the integrity of the State. Indeed, it would cut down the risk of a possible break-up of the national community and the economic and social system, would make for a more cohesive nation State and would guarantee peace and international security.

92. Five centuries after the encounter of two cultures, the western world was still imposing its will, its methods of production and consumption, its sacrosanct market economy and its conception of democracy, by means of arms, threats, blackmail or blockade, as in the case of Cuba, on the small weaker peoples to which it denied the right to self-determination. It was time, five centuries after the arrival of the Conquistadors in the Americas, for States to shoulder their historical and political responsibilities and restore the rights of the indigenous peoples and nations, in particular the right to self-determination. In denying them that right, they would perpetuate colonial injustice, virtually compelling the oppressed indigenous nations to take up arms.

93. The events in Abkhazia were a tragic example of violation of that right. Georgia's Council of State had called for dissolution of the Parliament elected by the Abkhaz people and the commander of the Georgian forces had said on Soviet TV that, in the war against the Abkhaz, he was ready to sacrifice 100,000 men to put an end to the Abkhaz question once and for all. For his own part, he would like to conclude by thanking Mrs. Daes and Mr. Alfonso Martínez for that further contributions in championing the cause of the indigenous peoples.

94. Mr. SACHAR said it was gratifying that Mrs. Daes had, in her report (E/CN.4/Sub.2/1992/33) pointed to all the injustices suffered by the indigenous peoples. Mr. Alfonso Martínez, in his report (E/CN.4/Sub.2/1992/32), explained that the westerners had conveyed a distorted picture that was a caricature of the non-European peoples, on whom they tried to impose the notion of progress bequeathed to them by the philosophy of the Enlightenment, which was based on the assertion that the past was different from the present and future and that the future was intrinsically better than the past and present (para.84). In paragraph 138, the report also pointed out to that, even though the Europeans considered the indigenous societies as "inferior", they were none the less fully aware that they were dealing with sovereign nations. The point now was not to display charity towards those nations but to redress the historical injustices they had suffered. Mr. Alfonso Martínez would doubtless provide information in his next report on Asia and Africa that was just as interesting as that on the Americas. In the case of Asia, and more particularly India, his task would be made easier by the wealth of documents available on treaties.

95. Ms. PASSY (International Federation Terre des Hommes) said that, according to information supplied by the Indigenous Coordinating Body of the Brazilian Amazon, which represented more than 180,000 Indians and 70 peoples, the Brazilian Government's policy was reflected in many violations of particular rights of the indigenous peoples and of human rights in general. The Brazilian Constitution, in article 231, and the Interim Provisions Act of 5 October 1988, in article 67, required the Brazilian Government to proceed to demarcate all indigenous territories by October 1993. However, 85 per cent of indigenous territories in Brazil had been invaded by lumberjacks, gold prospectors, big landowners and mining companies, which simply carried on the extermination of the Indians that had started five centuries ago. The consequences of the invasion were tragic: the rise in violence, prostitution,

alcoholism, pollution, disease and famine. Some Indians were being killed and others were being arbitrarily imprisoned; still others were being driven to suicide.

96. One example of the situation was the case of the Manasa company, which had illegally occupied more than 300,000 hectares of indigenous land. Moreover, the Governor of the State of Amazonas, Mr. Gilberto Mestrinho, had in defiance of the Constitution threatened to send the police into indigenous territory in order to prevent the demarcation. In the State of Roraima, 9,600 Indians were living in the Raposa/Serra do Sol indigenous area, a region of 15,000 hectares that was very rich in precious stones and gold. Consequently, it had been unlawfully invaded by 180 big farmers and thousands of diamond prospectors. The Governor of the State of Roraima had, for his part, said in the Roraima newspaper on 11 September 1991 that demarcating the Raposa/Serra do Sol indigenous area would be harmful to the State and would be of no benefit to the Indians. The indigenous peoples were also facing the Brazilian armed forces, which intended to control and militarize all indigenous territories on the border regions, which accounted for a quarter of the area of Amazonia.

97. She called on the Sub-Commission to urge the Brazilian Government firmly to respect the rights of the indigenous peoples and human rights in general, to recognize the need to protect the environment and, as required under the Constitution and the law, to proceed to demarcate all indigenous territories by October 1993.

98. Mr. Sachar resumed the Chair.

99. Ms. OZDEN (Centre Europe-Tiers Monde) said that for some years her organization had been concerned about the exploitation of the peoples of Amazonia and the oppression by the authorities, which did not hesitate to resort to murder to achieve its aims. For example, the Brazilian armed forces had militarized the region of Upper Rio Negro, in the State of Amazonas, where they forcibly recruited young Indians. In the village of Cucui, the 4th Special Border Guard was subjecting Indians to psychological torture. In that village, the military commander of Amazonia-CMA had, without authorization from the indigenous communities, taken on non-Indian teachers to instil new anti-indigenous and racist ideas in children in primary school.

100. The Indians' traditional way of life, based on harmony between man and nature, was seriously disrupted by the invasion of farmers, gold prospectors and mining companies that devastated the natural environment and bought off the commanders of the army units in the region. Some diseases were making their appearance for the first time: tuberculosis, malaria and venereal disease. Whenever the soldiers went on leave, the indigenous communities were transformed into areas of prostitution. Gang rapes were commonplace. The Indigenous Coordinating Body of the Brazilian Amazon (COIAB) had in the press condemned the inhuman acts committed by the recruits in the Fifth Forest Infantry Battalion and the Commander, Colonel Abrao, had replied: "It is not my soldiers who rape the Indian women but the Indian women who come to my soldiers as prostitutes". The local courts had also ruled that COIAB's complaint was inadmissible, for those reasons. The National Indian Council, FUNAI, the official Government body supposed to help the indigenous

populations also showed no interest in the matter. It was clear to the indigenous organizations that the militarization of their territories was simply a pretext to protect the mining companies that were digging up the wealth of the area and to prevent demarcation of those territories, in flagrant violation of the Constitution and the law. She called on the Sub-Commission to intercede with the Brazilian Government and urge it to safeguard the survival of the indigenous peoples.

101. Mr. CALI (International Indian Treaty Council) congratulated Mrs. Daes on the way in which she had reported on the views expressed in the Working Group by indigenous organizations. He hoped that the declaration of the rights of indigenous peoples would be completed soon and that the Sub-Commission would extend the mandate of Mr. Alfonso Martínez, so that he could complete his study on treaties, agreements and other constructive arrangements between States and indigenous populations. In that connection, there was a major contradiction between improving international legal rules concerning indigenous peoples and the actual situation of those people, which the western world portrayed superficially as primitive societies belonging to the past - as pointed out by Mr. Alfonso Martínez in his report (E/CN.4/Sub.2/1992/32).

102. In Guatemala, for example, for five centuries the survival of the Mayan people had been jeopardized by attempts at genocide and ethnocide. Again, out of 5,000 radio stations in Latin America, no more than a dozen could be regarded as educational. The television channels simply showed soap operas and westerns. The Mayan people demanded certain rights: to exist as a people recognized as such; to the introduction of bilingual education; to the inclusion in the media of educational material on respect for nature; to participate in decision-making in the political, economic and social fields; to recognition of its forms of social and political organization; to direct participation in the negotiations between the Government and the Guatemalan army on the one hand, and Guatemalan National Revolutionary Unit (URNG) on the other; and to see those negotiations lead to special agreements to solve the structural problems that lay at the root of the armed conflict. He called on the Sub-Commission to send a delegation to Guatemala, a delegation that could be headed by Mr. Alfonso Martínez, in order to study the situation of the indigenous populations.

103. Mr.COE (National Aboriginal and Islander Legal Service Secretariat) asked how, in connection with the International Year for the World's Indigenous People, one could speak of "a new partnership" between non-indigenous and indigenous peoples when the indigenous peoples were still denied the right to self-determination. By excluding certain indigenous peoples from the list of colonized peoples and territories, the United Nations system was perpetuating an insidious form of racism. His organization therefore called on the Special Committee on Decolonization to expand the list of colonized territories and peoples and to include the indigenous peoples of the continent of Australia and other occupied territories in the Asia-Pacific region. That was the way in which the United Nations should contribute to the International Year for the World's Indigenous People.

104. Mr. BARKER (Australia) said that the Australian Government greatly appreciated the role played by the Working Group in defending the rights of indigenous peoples since its establishment in 1982. His delegation could

provide participants in the Sub-Commission with a list of the proposals it had made in order to strengthen that role. It welcomed the progress made by the Working Group in elaborating the draft declaration on the rights of indigenous peoples and more particularly the incorporation in the draft of the concept of self-determination, which should, admittedly, be handled carefully. It would be useful for the Working Group to adopt the draft declaration provisionally, so that the Sub-Commission could submit it to the Commission on Human Rights at its fiftieth session, in 1994.

105. Australia also welcomed the interest displayed by the Working Group in protection of the cultural property of indigenous peoples and the fact that the Sub-Commission had instructed Mrs. Daes to prepare a study on measures to be taken by the international community to strengthen respect for such property. Mrs. Daes would undoubtedly take account of the concerns and experience of indigenous populations in that regard. The work of specialist bodies such as UNESCO and the International Council of Museums would also be very relevant.

106. In a statement to the Working Group, copies of which were available to participants in the Sub-Commission, the Australian Minister for Aboriginal Affairs had described the measures taken by the Australian Government to redress disadvantages faced by aboriginal and Torres Strait Islander people. A Council consisting of some 25 prominent Australians, including both aboriginal and Torres Strait Islander people and non-indigenous Australians, had been set up to guide the application of a programme of reforms to respond to the aspirations of the indigenous peoples and improve aboriginal and non-aboriginal relations. Moreover, the Australian Government had endorsed 338 of the 339 recommendations made by the Royal Commission into aboriginal deaths in custody so as to remedy the social, economic, cultural and legal causes behind such deaths.

107. His Government welcomed the interest shown by the international community in the rights of Australia's indigenous peoples. In that regard, it should be pointed out that Australia was currently doing everything necessary to recognize the competence of the Committee against Torture and the Committee on the Elimination of Racial Discrimination to receive and consider communications from individuals. The Government would also be enacting a law on racial vilification. In a recent decision in the Mabo case, the High Court of Australia had rejected the concept of terra nullius so often used to justify the dispossession and oppression of Australia's indigenous peoples.

108. Lastly, his delegation recognized that much remained to be done to render justice to Australia's indigenous peoples. The Government was endeavouring to rectify those problems on the basis of the concept of reconciliation with aboriginal and other citizens and on the principle of self-determination, affording opportunities for Australia's indigenous peoples to take control of their own lives.

109. Mrs. DAES expressed her profound gratitude to the members of the Sub-Commission, representatives of non-governmental organizations and Government representatives for their highly constructive comments on the report by the Working Group on Indigenous Populations. She hoped that the international community in general and the General Assembly in particular

would continue to support the Working Group. In that connection, it was gratifying that the question of indigenous populations appeared on the agenda of World Conference on Human Rights. Lastly, she wished to thank Governments, NGOs and other private and public entities which had made voluntary contributions to the United Nations Fund for Indigenous Peoples.

110. Mr. ALFONSO MARTINEZ asked participants to excuse him for the delay in circulating his report (E/CN.4/Sub.2/1992/32) and invited those who had not had time to study it to send in their comments in writing so that he could take them into account in preparing the next report. He would also ask organizations representing indigenous populations to send him any information that was necessary in preparing the report. It would also be useful for Governments, including the Spanish and South American Governments, to bring to his attention historical documents relating to the question of treaties concluded between indigenous peoples and Governments that could be consulted in their national archives.

111. Lastly, he thanked the members of the Sub-Commission, including Mrs. Forero, Mrs. Warzazi and Mr. Sachar, as well as the non-governmental organizations, particularly the International Commission of Jurists, for their very stimulating comments on his report.

112. The CHAIRMAN said that the Sub-Commission had completed its consideration of agenda item 15.

The public meeting rose at 11.05 p.m.